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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,970	05/09/2002	Robert Groten	22750/524	1195
26646	7590	10/24/2003	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			PRATT, CHRISTOPHER C	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,970

Applicant(s)

GROTEN ET AL.

Examiner

Christopher C Pratt

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 14, 16, 18, 20, 22-23, 25-26, and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groten et al (5899785) in view of Fujiwara et al (6090730).

Groten is concerned with the creation of a nonwoven fabric for clean room clothing (col. 5, lines 20-24). The fabric is composed of super microfilaments having applicant's claimed titer (col. 2, lines 16-24). The filaments are split by water jets (col. 4, lines 25-28). The filaments are spun, stretched (drawn), and subjected to prebonding by water prior to splitting (cols. 3-4, lines 55-12). The prebonding consists of activating a latent crimp with water jets.

Groten teaches drawing the filaments, but fails to specify if the filaments are drawn "aerodynamically." Fujiwara teaches a process of melt spinning continuous conjugate filaments (abstract). Fujiwara teaches the filaments to be drawn using air suction (col. 1, lines 15-20 and col. 9, lines 48-53). It would have been obvious to a person having ordinary skill in the art to draw the fibers of Groten with air. Such a modification would have been motivated by the desire to utilize a common,

commercially available means of drawing that produces filaments having excellent hand, softness, and uniformity (col. 3, lines 60-65).

Groten teaches the use of bicomponent filaments comprising polyester and polyamide (col. 2, line 65) used in applicant's claimed proportions (col. 6, line 26).

Groten teaches applicant's claimed weight (abstract).

Groten teaches applicant's claimed fiber configuration (figs. 1-3).

With respect to claims 28-29, Groten teaches applying a splitting stimulus to both sides of the web (col. 4, lines 20-28). With respect to applicant's further process limitations, it is the examiner's position that the web of Groten is identical to or only slightly different than the web prepared by the method of applicant. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983).

Groten teaches emboss-calendering, thermofixation, and thermosetting (col. 4, lines 49-65).

3. Claims 15, 17, 19, 21, 27, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groten et al (5899785) in view of Fujiwara et al (6090730) and Hassenboehler, Jr. et al (5730923).

The combination of Groten and Fujiwara fails to teach an additional stretching and tempering process. Hassenboehler is concerned with the creation of a nonwoven web. Hassenboehler teaches subjecting a web to a secondary drawing and tempering process (col. 3, lines 29-39). It would have been obvious to a person having ordinary skill in the art to subject Groten's web to a secondary drawing process. Such a modification would have been motivated by the desire to improve the uniformity of the pores in Groten's web.

4. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groten et al (5899785) in view of Fujiwara et al (6090730) and Ahmed et al (5866675).

Groten teaches the use of an additive, but fails to specify which additive should be used (claim 6). Ahmed is concerned with the creation of a nonwoven web comprising multicomponent fibers (abstract). Ahmed teaches the use of applicant's claimed additive (col. 5, lines 25-39). It would have been obvious to a person having ordinary skill in the art to utilize Ahmed's additive in the fibers of Groten. Such a combination would have been motivated by the desire to improve the properties of Groten's fibers.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Christopher C. Pratt
October 19, 2003